

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Alabama Gas Corporation,)	
)	
Plaintiff,)	
)	Civil Action No. 2:10-cv-1840-IPJ
vs.)	
)	
)	
Travelers Casualty and Surety)	
Company, <i>et al.</i> ,)	
)	
Defendants.)	

DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION TO STRIKE

Defendants Travelers Casualty and Surety Company, *et al.*, (collectively “Travelers”), by and through their attorneys, submit this Reply Brief to Alagasco’s Response to Travelers’ Motion to Strike.

ARGUMENT

1. Alagasco admits that it filed its proposed Gustafson expert report -- which Alagasco mischaracterizes as a “Supplement to Expert Report” or “Unites supplement” -- seven days late. *See* Alagasco Resp. at 3. That fact alone is sufficient grounds to strike the Gustafson Report. Order (Doc. 60) at 2; Ex. A at 3. *See* cases cited in Travelers’ Brief in Support of Motion to Strike (Doc. 113) at 4-5.

2. Alagasco offers no reason, excuse or justification whatsoever for its late expert disclosure.

3. Alagasco nonetheless asserts that the expert disclosure deadline be ignored (at least for Alagasco) because, in Alagasco's view, Travelers has not suffered harm that cannot be overcome due to "the strength and depth of Travelers' counsel team," and because Travelers has already done its own work to locate aerial experts in timely fashion. Alagasco Resp. at 4. To the contrary, and as set forth in its initial Brief in support of its Motion to Strike, Travelers *has* been and *will* be handicapped by the week of time lost in the last month of discovery, in which eight (8) other expert depositions and several other fact witness depositions are already scheduled. Travelers should not be penalized or handicapped by Alagasco's failure to disclose its own experts in accordance with the Scheduling Order.

4. Alagasco's assertion that the late Gustafson report contemplates "only a narrow modification of the expert opinion originally disclosed" (Alagasco Resp. at 5) does not alter, overcome or justify the Gustafson Report's lateness or the prejudice that allowing such a late filing would inflict upon Travelers.

5. Alagasco's assertion that Travelers' Motion to Strike Gustafson's report is "premature" because Alagasco desires to offer Gustafson as a rebuttal witness is undercut by a single simple point -- *the Scheduling Order does not*

provide for designation of rebuttal witnesses. Discovery closes in two weeks, and summary judgment briefs must be submitted no later than November 15, 2011.

The parties previously agreed to the terms of the Scheduling Order, and the Court entered it. If Alagasco now desires to designate such rebuttal experts, then it must -- as it acknowledges -- seek to amend to the Scheduling Order to allow for such designation, amend the discovery cut-off so that Travelers is allowed sufficient time to depose such rebuttal experts, and amend the deadline for summary judgment briefs to allow sufficient time for all discovery to be completed beforehand. Alagasco Resp. at 10. Alagasco has not done so, but even if it does, that does not justify blatant disregard of the deadlines of the Scheduling Order.

For the foregoing reasons, Travelers respectfully requests that the Court grant its Motion to Strike Alagasco's late-filed expert report.

Dated: October 14, 2011

Respectfully submitted,

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CERTIFICATE AS TO TYPE SIZE

The undersigned certifies that the foregoing document has been prepared with 14-point type as required by the Court in its Administrative Procedures for Filing, Signing, and Verifying Pleadings and Documents at Section II(A)(1).

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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2011, a copy of the foregoing document
“Defendants’ Reply Brief In Support Of Motion To Strike” was sent by email and
U.S. First Class Mail, postage prepaid, to counsel for the Plaintiff:

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